

# **EXHIBIT 1**

**AFFIDAVIT OF EDWARD GATELY**

I, Edward Gately, being duly sworn, state as follows:

1. I am an Officer of the Boston Police Department and have been so employed for approximately nine years.

2. During my employment I have made numerous arrests involving marijuana or where marijuana was present. I have frequently seen, handled and smelled unburnt marijuana. I also received basic training concerning drugs, including marijuana, at the Boston Police Academy.

3. On September 28, 2003, at approximately 2:00 a.m., I was on duty with my partner, Officer Jon-Michael Harber, in a police car outside Flanagan's restaurant on Huntington Avenue, Boston. We saw Earl Charley, accompanied by three other individuals, leave Flanagan's restaurant, cross to the other side of Huntington Avenue, and enter a grey KIA Optima automobile which was parked facing in the direction of Flanagan's next to the curb not far from Wait Street. I, along with Officer Harber, saw the grey KIA make an illegal u-turn from its parking spot, crossing two lanes of traffic and a double yellow line, and drive in the opposite direction on Huntington Avenue towards Tremont Street. (Huntington Avenue at this location has a double-yellow center line with three lanes on each side-two for traffic and one next to the curb for parking).

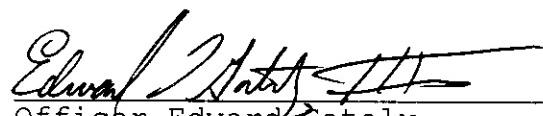
4. Officer Harber and I drove after the car. After it turned onto Tremont Street, we pulled it over. I approached the

driver's side of the car and, through the open window, asked the driver, Early Charley, for his license and registration. At approximately the same time, I smelled a strong odor that I recognized as marijuana coming from the driver's side of the car. I asked the driver, Earl Charley, to get out of the car, which he did. I then determined that the marijuana smell was coming from the front, center console. I immediately searched the console and recovered eight clear plastic bags of what appeared to be marijuana.

5. My usual practice when searching a car is to first search under the car seats.

6. After finding the marijuana, I asked the three other individuals in the car to get out of the car, which they did. Boston Police Officer Steven Canto, who had arrived at the scene with other Boston Police officers, and I then searched the car. In the glove compartment, Officer Canto found a black, Hi-Point Model C 9mm semiautomatic handgun containing eight rounds of 9mm ammunition and one piece of mail addressed to Earl Charley. The serial number of the gun was completely obliterated.

Signed under the pains and penalties of perjury this 7 day of July, 2004.

  
Officer Edward Gately  
Boston Police Department